

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

BENJAMIN KARL SMITH,

Plaintiff,

vs.

JEREMY MOODY, JOSHUA POSTMA,
RYAN DURKIN, MIKE HEBERT,
CORRECTIONAL OFFICER TROLLE,
CORRECTIONAL OFFICER SEGOVIA,

Defendants.

CV 16-00077-H-DLC-JTJ

FINDINGS AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE
JUDGE

Plaintiff Benjamin Smith filed a Complaint pursuant to 42 U.S.C. § 1983 raising claims under the First and Fourteenth Amendments to the United States Constitution, RFRA, RLUIPA, and the Montana Constitution. (Complaint, Doc. 2 at 6.) The Court screened the Complaint pursuant to 28 U.S.C. §§ 1915, 1915A and found that the Complaint failed to state a claim upon which relief may be granted and was subject to dismissal. Mr. Smith was given until June 9, 2017, to file an amended complaint. (Doc. 13.) He did not do so.

Accordingly, for the reasons set forth in the Court's Order dated May 19,

2017 (Doc. 13), the Court issues the following:

RECOMMENDATIONS

1. This matter should be DISMISSED WITH PREJUDICE for failure to state a claim.
2. The Clerk of Court should be directed to close this matter and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.
3. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.
4. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Mr. Smith failed to state a claim upon which relief may be granted.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Smith may file objections to these Findings and Recommendations within

fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 28th day of June 2017.

/s/ John Johnston

John Johnston

United States Magistrate Judge

¹As this deadline allows a party to act after the Findings and Recommendations is "served," it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.